pharmaceutical goods were kept in the godown but 64 cases were found missing. Some of the goods were found in a local firm. Again, in *Port Swettenham Authority* v. *The Borneo Co. (M) Sdn. Bhd.*[6] 173 cartons of teets and soothers were kept in the godown but 103 cartons disappeared. Further, in *Lembaga Pelabohan Swettenham* v. *Syarikat Hiap Bee*[7] all 8 cases of stainless steel sheets were kept in the godown but were never found. Each crate weighed approximately one ton.

Reference was also made to *Jackson's Malaya Berhad* v. *Penang Port Commission.*[8] There again one carton of merchandise was lost. The loss was conceded by defendant who contended that defendant's liability was limited to $1000 under By-law 79. This contention failed as it was held that By-law 79 was *ultra vires* the powers given by the Penang Port Commission Ordinance, 1955.

By his supplementary submission appellants drew our attention to *P. Odernamall & Co.* v. *American President Lines Ltd. and Penang Harbour Board (No. 1)*[9] (shortage of 121 pieces of textile materials) and *Federal Flour Mills Ltd.* v. *"Ta Tung" Owners & Ors.*[10] (wheat grain contaminated by diesel oil) to support his contention that where the court is unable to determine where the loss happened, that loss being unexplained, then the carriers/shipowners, *i.e.* 1st respondents would be liable. In *Odernamall's case*[9] the agreed bundle of document which included the invoice giving details of the contents and a detailed assortment list giving details of the colours and consignment numbers of different goods packed in different cases had been admitted without objection. In the present case the admissibility of the invoices and packing list was challenged. This point was dealt with by the learned judge when he referred to *Muller's case.*[2] As for the *Federal Flour Mills' case*[10] it is sufficient to say that the facts in that case are different from the facts in the present case. Further, the argument in court was mainly that the learned judge was wrong to interfere with the finding of the learned President. The 1st and 2nd respondents were never called upon to answer anything. The three respondents each in turn received the goods in the same apparent good order and condition. To make any particular respondent liable it is for appellant to establish that the goods which were lost were entrusted to that particular respondent. Otherwise, it would mean that such respondents would be liable for goods which were never received. In view of the objection taken to the admissibility of the invoice and packing list, it was incumbent on appellants to prove that the goods lost were inside the cases at the time they were shipped: *The Ida.*[10]

Here the 8 cases appeared outwardly to be in good order and condition. It was only on closer examination that 4 cases showed marks of having been prised open. There is no reason to doubt that 3rd respondents received the goods in the same good order and condition as the other two respondents. But, from the proved facts the learned President drew the inference that the loss was due to the negligence of 3rd respondents. However, if 3rd respondents had shown that from the proved facts other inference or inferences could equally be drawn, one would have to be cautious. The evidence had shown a state of things under which it is doubtful that the loss was caused by 3rd respondents' negligence. They had said that they had taken reasonable and proper care of the goods. Normally, an appellate court would not lightly differ from the finding of the trial judge on a question of fact, but a distinction in this respect must be drawn between the perception of facts and the evaluation of facts. Where the sole question is the proper inference to be drawn from specific facts an appellate court is in as good a position to evaluate the evidence as the trial judge, and should form its own independent opinion, though it will give weight to the opinion of the trial judge. See *Benmax* v. *Austin Motor Co. Ltd.*[11] This is precisely what happened in the present case where the learned judge differed from the learned President in evaluating the evidence.

For reasons given, I would dismiss this appeal with costs to all three respondents.

Ali Ag. C.J. (Malaya) and **Raja Azlan Shah F.J.** concurred.

Appeal dismissed.

Solicitors: *Jayaraman, Ong & Co.; Chung & Vello; Thillaimuthu & Phock Kin; Lim Huck Aik & Co.*

RE APPLICATION OF TAN BOON LIAT & ORS.
TAN BOON LIAT v. MENTERI HAL EHWAL DALAM NEGERI, MALAYSIA & ORS.
PATRICK EUGENE LONG v. MENTERI HAL EHWAL DALAM NEGERI, MALAYSIA & ORS.
DONNIE LEE AVILA v. MENTERI HAL EHWAL DALAM NEGERI, MALAYSIA & ORS.

[F.C. (Suffian L.P., Raja Azlan Shah and Wan Suleiman F.JJ.) February 26, 1977]

[Kuala Lumpur — Federal Court Criminal Appeals Nos. 24, 16 and 17 of 1976]

Administrative Law — Habeas Corpus — Detention under Emergency (Public Order and Prevention of Crime) Ordinance, 1969 — Trafficking in drugs as member of international drug distribution syndicate — Whether order for detention within scope and ambit of Ordinance — Meaning of "public order" — Emergency (Public Order and Prevention of Crime) Ordinance, 1969.

Interpretation of Statutes — Whether preamble can be used to restrict meaning of section.

These three appeals from the decisions of the High Court reported in [1976] 2 M.L.J. 83 and [1976] 2 M.L.J. 133 were heard together and raise the question whether a person suspected of being engaged in drug trafficking may lawfully be detained under section 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance, 1969. The sole question on the appeals was whether the grounds on which the orders for detention were made were outside the scope and ambit of the Ordinance.

Held, dismissing the appeals: the ground on which the orders of detention were made against the appellants, namely trafficking in drugs, was within the scope and ambit of the

Emergency (Public Order and Prevention of Crime) Ordinance, 1969 and therefore the applications of the appellants were rightly dismissed.

The following authorities were cited in argument: *Durgadas* A.I.R. 1949 Allahabad 148 headnote, *Burrakur* A.I.R. 1961 S.C. 954, headnote (a), *Empress* A.I.R. 1958 S.C. 341, headnote 342(d), *Sheikh Gulfan* A.I.R. 1965 S.C. 1839, headnote (a), *Keates* [1911] A.C. 641, 642, 5th line, *Viscountess* [1922] 2 A.C. 339, 397, 9th line, *Abrahams* [1925] 2 K.B. 18, 34, bottom of page, *The River* 1876-7 2 App. Cas. 743, 763, 1st para, *A.G.* v. *H.R.H. Prince* [1957] 1 All E.R. 49, 53, *Surindra* A.I.R. 1950 East Punjab 282, headnote (a), *Kavalappara* 1960 A.I.R. S.C. 1080, headnote (k) and *Karam Singh* [1969] 2 M.L.J. 136.

[Editorial Note: Special leave to appeal against the decision of the Federal Court was refused by the Privy Council.]

FEDERAL COURT.

Karpal Singh (*K. Kumarendran* and *K. Balasundaram* with him) for the appellants.

Mohamed Zaki bin Tun Azmi (Deputy Public Prosecutor) for the respondents.

Suffian L.P.: (delivering the judgment of the Court): These three appeals were heard together and raise the question whether a person suspected of being engaged in drug trafficking may lawfully be detained under section 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance, 1969 ("the Ordinance") published as P.U.(A) 187/69.

The preamble of the Ordinance reads:

"AND WHEREAS the Yang di-Pertuan Agong is satisfied that immediate action is required for securing public order, the suppression of violence and the prevention of crimes involving violence."

Section 4(1) of the Ordinance reads:

"4. (1) If the Minister is satisfied that with a view to preventing any person from acting in any manner prejudicial to public order it is necessary that that person should be detained, or that it is necessary for the suppression of violence or the prevention of crimes involving violence that the person should be detained, the Minister shall make an order (hereinafter referred to as a 'detention order') directing that that person be detained for any period not exceeding two years."

Appeal No. 24

As regards Appeal No. 24, the facts were that on December 4, 1975, the applicant in the lower court and the appellant before us ("the appellant") was arrested and detained and on January 26, 1976, he was served with a detention order made by the Minister under section 4(1) of the Ordinance. As required by section 5(2)(b) of the Ordinance, he was also supplied with the grounds and the allegations of fact on which the order was made, as follows:

"GROUNDS ON WHICH THE DETENTION ORDER IS MADE.

That you are an active local 'infra-structure' member of an international drug distribution syndicate. Your activities have not only damaged the international image of Malaysia but have also caused an increase in criminal activities involving violence connected with drugs and you have thereby acted in a manner prejudicial to public order.

ALLEGATIONS OF FACT.

1. That you have since the month of October 1975 been an active local 'infra-structure' member of an international drug distribution syndicate.

2. That you have since October 1975 up to the time of your arrest on December 4, 1975 actively assisted members of the syndicate in obtaining a supply of drugs from Kuala Lumpur, Penang and Kedah for smuggling overseas."

The appellant challenged the validity of the order of detention solely on the contention that the grounds on which the order was made are outside the scope and ambit of the Ordinance.

The learned judge held that they were not, see his judgment reported at [1976] 2 M.L.J. 83, and the appellant has appealed to us.

The issue before us is the same, namely, were those grounds outside the scope and ambit of the Ordinance?

The learned judge stated the arguments thus at page 85:

"The crunch of the argument advanced on behalf of the applicant is that the scope of the Ordinance is limited and that it applies and is intended to apply only for the purposes of suppressing activities involving violence and preventing crimes of violence. Mr. Karpal Singh for the applicant submits that the allegation that the applicant is an active member of an international drug distribution syndicate (which is covered by the generic term 'trafficking in drugs' as defined in section 2 of the Dangerous Drugs Ordinance, 1952 and this counsel accepts) which is the basis for the detention order made against him is neither within the scope of the Ordinance nor contemplated by it. In support of this contention, he has devoted a considerable part of his argument to a consideration of the preamble to the Ordinance and has asked me to consider the preamble and more particularly the pertinent part thereof for the purposes of determining the scope and ambit of the Ordinance and its operative parts and, in particular, section 4(1)."

After examining several authorities the learned judge concluded, and with respect we agree, that the appellant's detention came within the scope and ambit of the Ordinance. He said at pages 85 and 86:

"Although the preamble is part of a statute, it is not an operating part thereof. The aid of the preamble can be taken only when there is some doubt about the meaning of the operative part of the statute. The preamble undoubtedly throws light on the intent and design of the enacting authority and indicates the scope and purpose of the legislation itself but it should not be read as a part of a particular section of that written law. Where the enacting part is explicit and unambiguous the preamble cannot be resorted to, to control, qualify or restrict it....

....

The most important aspect in this regard is that the preamble cannot be invoked for the purpose of creating ambiguity in a statute....

It would appear to me that the preamble to the Ordinance is not relevant for the purposes of construing or considering the scope of the provisions of section 4(1) thereof as there is no ambiguity whatsoever in the latter. Section 4(1) clearly specifies the circumstances in which the Minister can arrive at his subjective satisfaction for the purposes of making a detention order with a view to preventing any person from acting *in any manner* (italics is mine) prejudicial to public order or where it is necessary for the suppression of violence or the prevention of crimes involving violence. The scope of the Ordinance is no doubt indicated and reflected in the recital I have adverted to, namely, the requirement of immediate action for securing public order, the suppression of violence and the prevention of crimes involving violence. These are general and wide words projecting the purpose and purport of the Ordinance and, in my view, the enacting provisions of section 4 elaborate and provide for that purpose and purport in much wider terms, as they empower the Minister to order the detention of a person with a view to preventing him from acting *in any manner prejudicial to public order* (emphasis mine) — an amplification of the phrase 'for securing public order' appearing in the preamble.

It would appear with respect that counsel for the applicant is in fact seeking to create an ambiguity in the Ordinance when none exists for the purposes of having recourse to the

preamble in order to restrict its scope. He places considerable stress on the words 'that immediate action is required' in the preamble as the basis of his argument that the purpose of the Ordinance was to restore order and that it could only have contemplated acts or crimes of violence committed within a reasonable period immediately after the incidents of May 13, 1969, and was intended to operate only until public order was restored. He submits that by the time Parliament met on February 20, 1971, the Ordinance had in fact spent its purpose and force and that it is significant that it was not re-enacted in a permanent form as an Act by Parliament. He contends that the drug problem was not as acute in 1969 as it has become since and that the Ordinance never in fact contemplated within its ambit such acts as trafficking in drugs.

I regret I can see no merit or force in these contentions advanced on behalf of the applicant. That immediate action was necessary after May 13, 1969, is beyond the pale of doubt, but I would think that the requirement of immediate action referred to in the preamble must necessarily correlate to the provisions of Article 150(2) of the Constitution which empower His Majesty to promulgate Ordinances having the force of law until both Houses of Parliament are sitting if satisfied that immediate action is required. The immediacy of the action cannot, in my view, be correlated to the life-span or rather operational efficacy of any Ordinance so enacted.

The fact that the Ordinance has not been re-enacted as an Act of Parliament is equally irrelevant as the Ordinance must necessarily by the express provisions of the Constitution continue to have effect until such time as either Parliament resolves otherwise unless sooner revoked by His Majesty (Article 150(3)) or it lapses at the expiration of a period of six months from the date on which the Proclamation of Emergency ceases to be in force (Article 150(7)). The Proclamation of Emergency issued by His Majesty on May 15, 1969, is still in force in law and in fact and the Ordinance promulgated as a result thereof is equally extant and functional, not theoretically, as counsel for the applicant puts it, but operatively, and applicable in circumstances warranted by its express provisions. The court is certainly in no position to pronounce the Ordinance moribund or exanimate on mere speculative hypotheses. Its enacted provisions must determine its scope and applicability, and in this regard I will presently have to deal with the question whether the matter of trafficking in drugs comes within its purview.

The contention that no substantial alteration in the ordinary law was intended is equally without substance as the Ordinance is emergency legislation and must be considered and construed in the light of its expressly enacted provisions, and its application and scope cannot be restricted, in the absence of limiting words in the enactment itself, to aggravated forms of prejudicial activity which are only calculated to engender violence as contended on behalf of the applicant."

Then as regards the expression "securing public order" in the preamble to the Ordinance, the learned judge examined several authorities on the meaning of public security and at pages 87 and 88 stated his conclusion as follows, with which we respectfully agree:

"Applying the norms and principles enunciated in the selection of cases I have adumbrated (which are by no means exhaustive on the topic under consideration) and with which I wholly agree and would respectfully adopt, it is abundantly clear that trafficking in drugs as a member of an international drug distribution syndicate which is the ground on which the order of detention against the applicant was made strikes at the very core of public order and any person indulging in such activities must necessarily be acting in a manner prejudicial to public order. It is not necessary to elaborate on the deleterious effects of drugs. Trafficking in drugs is a crime which also affects public health and public safety and can indeed be the spawn or nidus of crimes that ultimately result in violence or at least have a shattering effect on public tranquillity and society generally.

....

I am accordingly of the view that the ground on which the order of detention was made against the applicant, namely, trafficking in drugs, is within the scope and ambit of the Ordinance and that the contention to the contrary raised on behalf of the applicant is ill-founded, and I would in passing express the hope that my judgment in this matter will have served a purpose, if for nothing else, at least perhaps in providing a sufficient contraceptive against the proliferation of like applications for habeas corpus founded on the identical contention."

In the circumstances we would dismiss this appeal.

Appeals Nos. 16 and 17

As regards appeals Nos. 16 and 17, the facts are given in the judgment reported at [1976] 2 M.L.J. 133. Here too the sole issue before us is the same as in appeal No. 24 and the answer is also the same, and we would therefore dismiss these two appeals also.

Appeal dismissed.

Solicitors: *Karpal Singh & Co.; Kumar, Chan & Chia.*

MINISTER OF HOME AFFAIRS v. CHU CHOON YONG & ANOR.

[F.C. (Suffian L.P., Raja Azlan Shah and Wan Suleiman F.JJ.) March 15, 1977]

[Kuala Lumpur — Federal Court Criminal Appeals Nos. 20 and 21 of 1975]

Administrative Law — Banishment — Whether detention under banishment order made unlawful because of delay in issuing warrant of execution — Banishment Act, 1959, ss. 3, 5, 6, 7 and 10 — Criminal Procedure Code (F.M.S. Cap. 6), ss. 365 and 375 — Federal Constitution, Articles 5(2) and 162.

Constitutional Law — Fundamental liberty — Detention — Federal Constitution, Arts. 5(2) and 162.

In these two cases the respondents had been arrested and detained under banishment orders. No warrants of execution had been issued, as the Minister could not find a country willing to accept the respondents. It was held in the High Court that the continued detention of the respondents for more than three years in the one case and for more than six years in the other case was unlawful delay which converted their lawful detention to unlawful detention. The appellant appealed to the Federal Court.

Held, allowing the appeal: (1) the learned judge was in error when he found that the continued detention of the respondents was unlawful;

(2) a valid detention order under the Banishment Order remains valid until revoked. The Minister may suspend the order or may instead make an expulsion order so that the banishee may make his own arrangements to leave the country, but the making of those orders is a matter of discretion for the Minister and his refusal to do so does not affect the validity of the orders of detention that are impugned.

Cases referred to:-

(1) *Andrew s/o Thamboosamy* v. *Superintendent of Pudu Prisons, Kuala Lumpur* [1976] 2 M.L.J. 156.

(2) *Karam Singh* v. *Menteri Hal Ehwal Dalam Negeri* [1969] 2 M.L.J. 129.

FEDERAL COURT.

P.M. Mahalingam, Federal Counsel for the appellant.

S. Gamany for the respondent.

Suffian L.P. (read by Wan Suleiman F.J.): These two appeals were heard together.

In the case of Chu Choon Yong @ Choo Siang Meng @ C.C. Yong (Yong), on July 31, 1967, he was detained in Kluang under the Internal Security